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FILED  
JUL 31 2007  
CLERK OF DISTRICT COURT  
SAN FRANCISCO, CALIFORNIA

JSW

STEPHEN M. HAYES (SBN 83583)  
STEPHEN P. ELLINGSON (SBN 136505)  
MELISSA A. WURSTER (SBN 198899)  
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Attorneys for Defendant  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**C 07 3913**

KAREN LEE,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY; and DOES 1  
through 50, inclusive,

Defendants.

Case No.:

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY'S NOTICE OF  
REMOVAL OF CIVIL ACTION UNDER  
28 U.S.C. SECTIONS 1332 AND 1441  
[DIVERSITY JURISDICTION];  
DEMAND FOR JURY TRIAL

San Francisco County Superior Court,  
Case Number CGC-07-463871

**FAXED**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY (hereinafter "State Farm") hereby removes to this Court the state action  
described below:

1. State Farm is a defendant in the civil action commenced on May 31, 2007 in the  
Superior Court of the State of California, County of San Francisco, Case No. CGC-  
07-463871, entitled Lee v. State Farm Mutual Automobile Insurance Company.
2. State Farm was served with the Summons and Complaint on July 2, 2007. True and  
correct copies of the Summons and Complaint are attached hereto as Exhibit "1" and  
are incorporated as part of this notice.
3. This action is a civil action of which this Court has original jurisdiction under 28  
U.S.C. section 1332, and is one that may be removed to this Court by State Farm

1 pursuant to the provisions of 28 U.S.C. section 1441, subdivision (a), in that it is a  
2 civil action wherein the matter in controversy exceeds the sum of \$75,000 exclusive  
3 of interest and costs, and is between citizens of different states.

4 4. The fact that the amount in controversy exceeds the minimum requirement for  
5 diversity jurisdiction can be determined by the nature and extent of damages alleged  
6 in the complaint. Plaintiff alleges that she was insured under an automobile  
7 insurance policy issued by State Farm with underinsured motorist (UIM) limits of  
8 \$250,000 per person and \$500,000 per accident. (Complaint, ¶¶7-8.) Plaintiff  
9 further alleges that, on or about October 13, 2004, she and her husband "were  
10 involved in an accident caused by an underinsured motorist at the intersection of  
11 Dolores and 23rd Street in San Francisco..." and that "Plaintiff and her husband  
12 were crossing the street within a crosswalk when a motorist operating an SUV hit  
13 and struck both of them." (Complaint, ¶12.) Plaintiff alleges that her husband was  
14 hospitalized for 19 days before he passed away as a result of injuries sustained in the  
15 accident, and that she herself suffered "substantial injuries," including physical  
16 injuries and emotional distress. (Complaint, ¶¶13-15.) Plaintiff also alleges that she  
17 settled with the underinsured driver of the SUV for the driver's policy limits of  
18 \$15,000, and made a claim to State Farm for payment of her UIM for the  
19 "...\$250,000 per person UM/UIM limits of the State Farm policy, less the \$15,000  
20 limits received from the underinsured drivers motor vehicle liability insurance  
21 policy." (Complaint, ¶¶19, 21.)

22 5. Plaintiff alleges as special damages arbitration costs allegedly incurred in connection  
23 with the UIM arbitration proceeding and attorneys fees. (Complaint, ¶ 39.)  
24 Plaintiff's claim for attorney fees is an element of her special damages on a theory  
25 that plaintiff incurred these so-called *Brandt* fees to recover unreasonably withheld  
26 policy benefits. (*Brandt v. Superior Court*, 37 Cal.3d 813 (1985).)

27 6. Additionally, plaintiff asserts claims for general damages and punitive damages. The  
28 prayer for punitive damages is based on an alleged course of conduct from which

one can infer the punitive damage claim alone exceeds \$75,000. These allegations in and of themselves establish the amount in controversy exceeds \$75,000.

7. At the time of the commencement of this action, and at all times since, State Farm has been, and still is, a corporation of the State of Illinois, being incorporated under the laws of Illinois, and has had and continues to have its principal place of business in Illinois. Plaintiff Karen Lee has been and continues to be a citizen of the State of California, having been a resident of the City and County of San Francisco.

(Complaint, ¶1.)

8. This action was brought in the State of California. This corporate defendant was not, at the time of the institution of this action, and is not now, a corporation incorporated under the laws of the State of California, and did not have at the time of the institution of this action, and does not have now, its principal place of business in California.

9. State Farm initially responded to the complaint in the Superior Court for the County of San Francisco by way of an answer filed on July 31, 2007. A true and correct copy of the Answer is attached hereto as Exhibit "2."


**DEMAND FOR JURY TRIAL**

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY hereby demands a trial by jury.

Dated: July 31, 2007

HAYES DAVIS BONINO ELLINGSON  
MCLAY & SCOTT, LLP

By:

  
STEPHEN M. HAYES  
STEPHEN P. ELLINGSON  
MELISSA A. WURSTER  
Attorneys for Defendant  
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY

# **EXHIBIT 1**

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY  
and DOES 1 through 50, inclusive

REC'D BY: T

DATE: 7/2/07

TIME: 3:40

STATE FARM INSURANCE  
IRVINE OPERATIONS CENTER

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
KAREN LEE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco County Superior Court

400 McAllister Street

San Francisco, California 94102-4514

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael D. Michel, Esq., 2000 Powell Street, Suite 1000, Emeryville, California 94608; Telephone: (510)

547-7319

CASE NUMBER (Número del caso) **-07-463871**

DATE: MAY 31 2007  
(Fecha)

Gordon Park-Li

Clerk by  
(Secretaría)

P. NATI

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant
- ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): State Farm Mutual Automobile Insurance Company

under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

4. ☒ other (specify):

by personal delivery on (date): 7/2/07

ENDORSED  
FILED

San Francisco County Superior Court

MAY 31 2007

GORDON PARK-LI, Clerk

PARAM NATT

Deputy Clerk

1 Michael D. Michel, Esq. (SBN 062131)  
2 Jeff M. Fackler, Esq. (SBN 142101)  
3 MICHEL & FACKLER  
4 A Professional Corporation  
5 2000 Powell Street, Suite 1000  
6 Emeryville, California 94608  
7 Tel.: (510) 547-7319  
8 Fax: (510) 547-7320

CASE MANAGEMENT CONFERENCE SET

NOV - 2 2007 - 9AM

Attorneys for Plaintiff KAREN LEE

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

KAREN LEE,

Case No. C6C-07-463871

Plaintiff,

vs.

COMPLAINT FOR BREACH OF  
CONTRACT AND BREACH OF THE  
IMPLIED COVENANT OF GOOD FAITH  
AND FAIR DEALING

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY and DOES 1  
through 50, inclusive,

JURY TRIAL DEMANDED

Defendants

Plaintiff alleges as follows:

1. At all times relevant herein, plaintiff KAREN LEE ("plaintiff") is and was an individual residing in the City and County of San Francisco, California.
2. Plaintiff is informed and believes and thereupon alleges that, at all times relevant herein, defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY was and is a corporation authorized to transact insurance business in, and doing business in, the State of California and the City and County of San Francisco.
3. Plaintiff is informed and believes and thereupon alleges that, at all times relevant herein, the true names, capacities and/or identities of the defendants named in this complaint as DOES 1 through 50, whether individual, partnership, associate, corporate, or otherwise, are unknown to plaintiff, who therefore sues such defendants by fictitious names. Plaintiff will amend



1 her complaint to show such defendants' true names and capacities when they have been  
2 ascertained.

3 4. Plaintiff is informed and believes and thereupon alleges that, at all times relevant  
4 herein, each of the defendants sued and identified above acted and/or omitted to act as alleged  
5 herein, and/or conspired with, participated with and/or ratified the acts and/or omissions of the  
6 defendants sued herein, and each of them.

7 5. Plaintiff is informed and believes and thereupon alleges that, at all times relevant  
8 herein, each of the defendants was the agent, servant, and/or employee of each of the remaining  
9 defendants and at all times were acting within the course and scope of such agencies and/or  
10 employment, each with the consent of the other.

11 6. In 2004, plaintiff and her husband, James Lee, were residents of San Francisco,  
12 California. As of October 2004, plaintiff and her husband had been married for 39 years and  
13 James Lee was the sole provider of financial support for the family.

14 7. In 2004, plaintiffs renewed a written policy of automobile insurance, Policy No.  
15 D620-652-056 ("the Policy"), issued by State Farm MUTUAL AUTOMOBILE INSURANCE  
16 COMPANY and DOES 1 through 10 (collectively, "State Farm") to plaintiffs. The policy was in  
17 full force and effect at all times relevant to this action, including, without limitation, on October 13,  
18 2004.

19 8. The material terms of the Policy include the term that, in exchange for premiums  
20 paid by the Lees, State Farm would pay all damages that plaintiff and her husband were legally  
21 entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily  
22 injury either individual sustained. Pursuant to the Policy, State Farm agreed that it would pay up to  
23 \$250,000.00 per person and \$500,000.00 per accident for bodily injury sustained by an insured in  
24 an accident with an uninsured motorist.

25 9. The Policy defines uninsured motorist to include an underinsured motorist, that is, a  
26 motorist who was insured for motor vehicle liability but who had an insurance policy with limits  
27 less than the \$250,000.00/500,000.00 uninsured/underinsured ("UM/UIM") limits of the Lees'  
28 State Farm automobile insurance policy.

1           10.     The insurance contract between the Lees and State Farm was formed and entered  
2 into in San Francisco County and was intended by the parties to be performed in that county.

3           11.     At all times relevant herein, the Lees paid all premiums due on the Policy and  
4 otherwise complied with all terms and conditions of the Policy.

5           12.     On or about October 13, 2004, while the Policy was in full force and effect, plaintiff  
6 and her husband were involved in an accident caused by an underinsured motorist at the  
7 intersection of Dolores and 23rd Street in San Francisco. Plaintiff and her husband were crossing  
8 the street within a crosswalk when a motorist operating an SUV hit and struck both of them.

9           13.     James Lee suffered severe injuries, including traumatic brain injuries, in the  
10 accident. Mr. Lee was hospitalized for 19 days, until he passed away as the result of his injuries.  
11 Plaintiff also suffered substantial injuries, including a broken arm and head injuries, caused by the  
12 impact of the motor vehicle.

13           14.     Plaintiff contemporaneously witnessed the impact of the vehicle which struck her  
14 husband and subsequently resulted in his death. Before the impact, plaintiff observed her husband  
15 attempt to protect her from being struck by the vehicle.

16           15.     At the time of the accident, James Lee, was the sole financial provider for his wife.  
17 Plaintiff also relied on her husband for emotional support, care, comfort, society and  
18 companionship.

19           16.     The driver of the SUV (hereafter, "the underinsured motorist") was solely at fault  
20 for the accident. The Lees did not cause or contribute to the accident. The Lees were crossing the  
21 street inside the marked crosswalk, and were complying with the electronic traffic signals  
22 controlling the intersection. The underinsured motorist unlawfully entered the intersection against  
23 the traffic signal and struck the Lees, who were lawfully in the intersection.

24           17.     Following the accident, plaintiff and her husband were both transported to a local  
25 hospital for emergency medical treatment. Plaintiff incurred the costs of emergency medical  
26 transport and emergency hospital and medical expenses as a result of the treatment for her injuries  
27 caused in the accident.

28           18.     Plaintiff notified her insurer, State Farm, of the accident and of her potential claim



1 for uninsured/underinsured motorist benefits for the accident. Plaintiff further requested from State  
2 Farm confirmation of all coverages and benefits potentially available to her under the State Farm  
3 policy.

4 19. At the time of the accident, the underinsured motorist had an automobile liability  
5 insurance policy with the statutory minimum limits of coverage, namely, \$15,000.00 per person and  
6 \$30,000.00 per accident liability coverage. Plaintiff submitted a liability claim to the insurance  
7 carrier for the underinsured motorist and, after confirming that the driver had no other significant  
8 assets, settled with the driver for payment of the driver's liability insurance policy limits.

9 20. State Farm was notified of plaintiff's intention to settle with the underinsured  
10 motorist for payment of his policy limits. In January 2005, plaintiff gave State Farm written  
11 confirmation of the driver's liability insurance limits and the settlement of her claim against the  
12 driver for payment of those limits.

13 21. In January 2005, plaintiff also submitted a claim to State Farm for payment of her  
14 underinsured motorists claim, namely, for the \$250,000.00 per person UM/UTM limits of the State  
15 Farm policy, less the \$15,000.00 limits received from the underinsured driver's motor vehicle  
16 liability insurance policy.

17 22. Plaintiff promptly provided State Farm with documentation establishing the liability  
18 of the underinsured motorist and of the absence of any liability on the part of plaintiff or her  
19 husband. Plaintiff also provided State Farm with all of the information necessary for State Farm to  
20 investigate both liability and damages with respect to plaintiff's claim. Among other things,  
21 plaintiff provided State Farm with information concerning the nature and extent of plaintiff's  
22 injuries, documentation of the treatment she received and the medical expenses she incurred, and  
23 the names and identities of plaintiff's treating medical providers. Plaintiff also provided a  
24 description of the circumstances of the accident and her claims against the underinsured motorist.

25 23. At all times, plaintiff cooperated with State Farm and was willing to cooperate in  
26 any investigation by State Farm.

27 24. State Farm was aware at all relevant times that the accident had left her a widow and  
28 without the financial support and care and companionship of her husband. State Farm also was

1 aware of the severity of plaintiff's own injuries and the expenses she incurred due to those injuries.  
2 State Farm also was aware that plaintiff witnessed the fatal injuries sustained by her husband.

3 25. Despite the fact that plaintiff submitted her UIM claim and requested payment of the  
4 UM/UIM limits, less the amount received from the underinsured motorist, State Farm undertook no  
5 substantive investigation of the claim. State Farm did not undertake to obtain a statement from  
6 plaintiff concerning the accident, her observation of the injuries to her husband, or her own injuries.  
7 Plaintiff is informed and believes and thereon alleges that State Farm conducted no substantive  
8 investigation to confirm the information and documentation that plaintiff provided to it.

9 26. Plaintiff complied with State Farm's requests for information even though State  
10 Farm requested information not relevant to its obligation to pay policy benefits to plaintiffs.

11 27. Notwithstanding its receipt of proof of the underinsured motorist's liability and  
12 plaintiff's damages in an amount in excess of its UM/UIM coverage limits, State Farm refused to  
13 promptly pay plaintiff the underinsured motorist's benefits to which she was entitled. In so acting,  
14 State Farm refused to consider evidence favorable to plaintiff establishing that plaintiff's damages  
15 caused by the underinsured motorist exceeded the underinsured motorist limits of the Policy.

16 28. At the time State Farm failed and refused to pay plaintiff the policy benefits she was  
17 owed, State Farm knew that it was obligated to pay plaintiff the full uninsured motorist benefits  
18 provided by the Policy. State Farm knew plaintiff was experiencing significant and ongoing  
19 financial difficulties due to the injuries she sustained in the accident and the death of her husband.  
20 Plaintiff is informed and believes and thereon alleges that State Farm sought to use plaintiff's  
21 financial circumstances in order to coerce plaintiff to accept an amount less than the full policy  
22 benefits to which plaintiff was entitled.

23 29. Because State Farm refused to pay the policy benefits owed to plaintiff and refused  
24 to competently or thoroughly investigate or evaluate plaintiff's claim for UIM benefits, plaintiff  
25 was forced to demand arbitration of her UIM claim. Due to State Farm's failure to pay plaintiff  
26 policy benefits that she was owed, plaintiff was forced to borrow money to support herself.

27 30. State Farm knew at the time arbitration was demanded that it was contractually  
28 obligated to pay plaintiff the limits of the uninsured motorist coverage for plaintiff's injuries.

1 Plaintiff is informed and believes and thereon alleges that State Farm forced plaintiff into  
2 arbitration in order to coerce a more favorable settlement, to punish plaintiff for asserting her  
3 contractual rights and to delay payment of plaintiff's claim for benefits.

4 31. For a year after the accident, State Farm refused to pay any UIM benefits to plaintiff  
5 despite confirmation in January 2005 that plaintiff had a valid UIM claim and that State Farm had  
6 no defense of comparative fault applicable to plaintiff's claim against the underinsured motorist.

7 32. On or about October 15, 2005, more than a year after the accident, State Farm  
8 tendered to plaintiff \$10,000.00 as an "advance" of UM/UIM benefits. At the time State Farm  
9 made this purported advance, it was aware that plaintiff had incurred expenses, including medical  
10 expenses and the cost of emergency medical treatment, related to the accident which exceeded the  
11 amount of State Farm's payment. State Farm also was aware that plaintiff's other damages  
12 resulting from the accident far exceeded the amount of its payment.

13 33. State Farm refused without cause to pay plaintiff the policy benefits she was owed in  
14 order to delay plaintiff's recovery of the contractual benefits to which she was entitled, so that State  
15 Farm could benefit financially from the use of the money it owed plaintiff.

16 34. After plaintiff demanded arbitration, it remained clear that plaintiff's damages for  
17 bodily injury caused by an underinsured motorist exceeded the UIM bodily injury limits of the  
18 Policy issued by State Farm to plaintiff. Despite this fact, State Farm refused to pay plaintiff the  
19 uninsured motorist limits of the Policy.

20 35. After plaintiff demanded arbitration, State Farm continued to refuse to properly  
21 investigate and/or evaluate plaintiff's claim for underinsured motorist benefits. During this period,  
22 State Farm continued to ignore the plaintiff's request for payment of benefits, and the information  
23 which plaintiff had already provided to State Farm concerning her damages. State Farm also  
24 purported to conduct discovery to obtain information which either already had been provided to it  
25 by plaintiff or which it could have obtained through the investigation it failed and refused to  
26 perform.

27 36. In May 2006, 19 months after the accident, State Farm made another nominal  
28 "advance" to plaintiff, in an amount grossly inadequate to compensate plaintiff for the damages she

1 suffered as a consequence of her injuries and losses caused by the underinsured motorist. At the  
2 time this payment was made, the information which was and had been made available to State  
3 Farm demonstrated that plaintiff's damages exceeded the UIM limits of the State Farm policy, and  
4 far exceeded the purported advances made to date.

5 37. State Farm subsequently purported to tender the remaining UIM limits of the Policy  
6 to plaintiff.

7 38. As a result of State Farm's refusal to pay plaintiff the policy benefits she was owed  
8 at the time those benefits were owed, plaintiff has suffered substantial damage.

9 39. Plaintiff incurred substantial economic losses as a result of State Farm's refusal to  
10 pay policy benefits including, without limitation, loan fees and costs and the interest on borrowed  
11 money, loss of her husband's income, arbitration costs, attorneys fees and costs and the loss of  
12 interest on the unpaid policy benefits.

13 40. Plaintiff suffered and continues to suffer severe and lasting emotional distress as the  
14 result of State Farm's refusal to pay policy benefits in a timely manner. Plaintiff has suffered  
15 profound and extreme embarrassment, grief, humiliation, fear and worry, all as a direct result of the  
16 conduct of defendants, and each of them.

17 41. Plaintiff is informed and believes and thereon alleges that State Farm and its agents at  
18 all relevant times purposefully refused plaintiff's requests for payment of the benefits due to her  
19 under the Policy and in order to coerce a settlement for less than full value and/or otherwise  
20 compromise her claim subject to terms unfavorable to her. In so doing, State Farm has acted in  
21 willful disregard of plaintiff's rights under the Policy. State Farm knew and/or should have known  
22 that its actions would cause economic injury to plaintiff and cause plaintiff to suffer severe and  
23 lasting emotional distress, which plaintiff in fact suffered.

24 **FIRST CAUSE OF ACTION**

25 **BREACH OF CONTRACT**

26 (Against STATE FARM and DOES 1 through 50)

27 42. Plaintiff hereby incorporates by reference Paragraphs 1 through 41 of this Complaint  
28 as though fully set forth herein.

1           44. Plaintiff and her husband entered into a written insurance contract with defendant  
2 State Farm and Does 1 through 10 which provides coverage for damages which plaintiff and her  
3 husband were legally entitled to recover from the owner or operator of an underinsured motor  
4 vehicle.

5           45. Further, as with all contracts in the State of California, this insurance contract  
6 includes an implied covenant of good faith and fair dealing which requires defendants to place the  
7 interests of its insureds in obtaining policy benefits on the same level as its own interests, i.e.,  
8 defendants have an obligation to give at least as much consideration to the interests of plaintiff as  
9 they do to their own.

10          46. At all relevant times herein, by performing all the conditions, covenants and  
11 promises in accordance with the terms and conditions of the Policy, plaintiff reasonably expected to  
12 be assured of "peace of mind" and financial and emotional security in the event of bodily injury and  
13 death caused by an underinsured motorist.

14          47. On or about October 13, 2004, while the Policy was in full force and effect, plaintiff  
15 sustained serious bodily injuries caused by an uninsured motorist and arising out of the ownership,  
16 operation and use of an underinsured motor vehicle. Plaintiff further suffered severe emotional  
17 distress and loss of the emotional and financial support, companionship and services as the result of  
18 bodily injuries and death suffered by her husband which arose out of the ownership, operation and  
19 use of an underinsured motor vehicle.

20          48. Plaintiff's damages were insured under the policy issued by State Farm, in an  
21 amount exceeding the UM/UIM limits of the Policy.

22          49. Defendants failed and refused to timely and fully tender their performance as  
23 required by the Policy by payment to plaintiff of all monies due and owing for damages caused by  
24 an underinsured motorist in compliance with all of the terms of the Policy.

25          50. Defendants' failure and refusal to honor their contractual obligations includes, but is  
26 not limited to, intentionally delaying payment of benefits under and violating the provisions of the  
27 Policy covering bodily injury caused by an underinsured motorist; intentionally refusing and failing  
28 to pay the full amount of plaintiff's losses covered under the Policy; failing and intentionally



1 refusing to promptly investigate, evaluate and resolve plaintiff's claims; refusing to pay for losses  
2 covered under the Policy; delaying payments due under the Policy; and ignoring the covenant of  
3 good faith and fair dealing implied in every contract.

4 51. As a consequence of defendants' failure and refusal to timely perform its obligations  
5 under the Policy, plaintiff has suffered the following damages:

6 a. Compensatory damages for failure to timely pay plaintiff the full value of all  
7 losses covered under the Policy.

8 **SECOND CAUSE OF ACTION**

9 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

10 (Against STATE FARM and DOES 1 through 50)

11 52. Plaintiff hereby incorporates by reference Paragraphs 1 through 51 of this Complaint  
12 as though fully set forth herein.

13 53. STATE FARM and Does 1 through 50 have wrongfully and intentionally withheld  
14 benefits due under the Policy by, *inter alia*, denying benefits due under the Policy; unreasonably  
15 delaying the payment of benefits due under the Policy at the time those benefits were due; and  
16 misrepresenting the terms of the Policy and defendants' obligations thereunder. Furthermore, this  
17 improper withholding of benefits due under the Policy was unreasonable and in bad faith, i.e.,  
18 knowingly done without proper cause.

19 54. By committing the acts hereinabove alleged, defendants breached the covenant of  
20 good faith and fair dealing implied in the insurance contract. Defendants' acts of "bad faith"  
21 include, but are not limited to, the following:

- 22 a. Failing to investigate plaintiff's claims thoroughly, objectively or fairly;
- 23 b. Ignoring and refusing to properly evaluate information favorable to  
24 plaintiff's claim without any reason for doing so;
- 25 c. Unreasonably denying benefits due under the Policy;
- 26 d. Unreasonably delaying the payment and/or processing of plaintiff's claims  
27 by refusing and failing to pay benefits at the time they were due;
- 28 e. Refusing to consider information favorable to plaintiff's claims; and



1 f. Misrepresenting, concealing or failing to disclose the material terms of the  
2 Policy, plaintiff's rights under the Policy and defendants' obligations under the Policy.

3 55. The conduct as outlined above demonstrates a failure or refusal to discharge  
4 contractual responsibilities resulting not from honest mistake or negligence but rather by conscious  
5 and deliberate acts which unfairly frustrate the agreed common purposes and disappoints the  
6 reasonable expectations of the plaintiff, thereby depriving her of the benefits of the Policy.

7 56. In addition to the foregoing, defendants have committed acts in violation of  
8 Insurance Code section 790.03(h), which creates a presumption of breach of the implied covenant  
9 of good faith and fair dealing, including, but not limited to, the following:

10 a. Misrepresenting facts and insurance policy provisions relating to any  
11 coverages at issue (Ins. Code §790.03(h)(1));

12 b. Failing to acknowledge and act promptly on communications with respect to  
13 claims (Ins. Code §790.03(h)(2));

14 c. Failing to adopt and implement reasonable standards for prompt  
15 investigation of processing of claims (Ins. Code §790.03(h)(3));

16 d. Not attempting in good faith to effectuate prompt, fair and equitable  
17 settlement of claims in which liability has become reasonably clear (Ins. Code §790.03(h)(5)); and

18 e. Compelling an insured to institute litigation to recover amounts due under an  
19 insurance policy by offering substantially less than the amount she was entitled to recover (Ins.  
20 Code §790.03(h)(6));

21 57. In addition to the foregoing, defendants have violated the California Department of  
22 Insurance Unfair Claims Settlement Practices Regulations by acting as follows:

23 a. Failing to respond to, and failing to provide a complete response to,  
24 communications from plaintiff regarding her claim within 15 days of the receipt of such  
25 communications (10 Cal. C. Regs. §2695.5(b));

26 b. Failing to accept or deny claims, and affirm or deny liability within 40 days  
27 after receipt of the notice of claim, unless they advise the claimants in writing of the reasons for  
28 delay, and thereafter of the reasons for further delay in writing every 30 days (10 Cal. C. Regs.

1 §2695.7(b), (c));

2 c. Failing to conduct and diligently pursue a thorough, fair and objective  
3 evaluation of plaintiff's claims (10 Cal. C. Regs. §2695.7(c));

4 d. Persisting in seeking information not reasonably required for, or material to,  
5 the resolution of plaintiff's claims (10 Cal. C. Regs. §2695.7(c);

6 e. Failing to pay claims within 30 days after coverage is determined (10 Cal. C.  
7 Regs. §2695.7(b));

8 f. Failing to pay the undisputed amounts of claims within 30 days (10 Cal. C.  
9 Regs. §2695.7(h));

10 g. Attempting to settle a claim by making an unreasonable settlement offer (10  
11 Cal. C. Regs. §2695.7(g)); and

12 h. Failing to specify reasons for needing additional time to determine whether a  
13 claim should be accepted and/or denied, including specification of any additional information the  
14 insurer requires in order to make the determination and providing written notice as to any continued  
15 reasons for the company's inability to make such a determination (10 Cal. C. Regs. §2695(b)).

16 58. In doing the aforementioned acts, defendants acted with malice, oppression, fraud  
17 and engaged in despicable conduct in conscious disregard of the rights of plaintiff. The conduct  
18 outlined above was the result of defendants acting for their own corporate and economic interests in  
19 knowing violation of its duties to plaintiff and with the intent to intimidate, threaten and pressure  
20 plaintiff into accepting less under the Policy than she is legally entitled to recover.

21 59. As a consequence of defendants' unjustified failure and refusal to timely perform  
22 their obligations under the Policy, plaintiff has suffered the following damages:

23 a. Compensatory damages for failure to promptly pay plaintiff's losses and all  
24 losses covered under the Policy;

25 b. Compensatory damages for failure to promptly pay losses covered under the  
26 Policy;

27 c. Consequential damages on all claims, including interest on the amounts  
28 owed by defendants to plaintiff at the time they were owed;

- d. Consequential damages for severe emotional distress;
- e. Economic losses; and
- f. Punitive damages for defendants' malicious and oppressive conduct in an amount sufficient to punish defendants and deter it from committing similar conduct in the future with respect to other insureds, in an amount to be proven at time of trial.

WHEREFORE, plaintiff prays for relief as follows:

1. For compensatory damages according to proof at time of trial;
2. For consequential damages according to proof at time of trial; and
3. For punitive damages in an amount to punish and deter defendants' further conduct and from committing similar conduct in the future with respect to other insureds, in an amount to be proven at time of trial.
4. For attorneys fees, costs of suit and interest; and
5. For such other and further relief as the court deems appropriate.

Dated: May 30, 2007

MICHEL & FACKLER  
A Professional Corporation

By

  
Michael D. Michel, Esq.  
Attorneys for Plaintiff KAREN LEE

**JURY TRIAL DEMANDED**

Plaintiff KAREN LEE hereby demands a jury trial on all claims and causes of action asserted herein.

Dated: May 30, 2007

MICHEL & FACKLER  
A Professional Corporation

By

  
Michael D. Michel, Esq.  
Attorneys for Plaintiff KAREN LEE

# **EXHIBIT 2**

1 STEPHEN M. HAYES (SBN 83583)  
2 STEPHEN P. ELLINGSON (SBN 136505)  
3 MELISSA A. WURSTER (SBN 198899)  
4 HAYES DAVIS BONINO ELLINGSON MCLAY & SCOTT, LLP  
5 203 Redwood Shores Parkway, Suite 480  
6 Redwood Shores, California 94065  
7 Telephone: 650.637.9100  
8 Facsimile: 650.637.8071

9 Attorneys for Defendant  
10 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN FRANCISCO

14 KAREN LEE,

15 Plaintiff,

16 V.

17 STATE FARM MUTUAL AUTOMOBILE  
18 INSURANCE COMPANY; and DOES 1  
19 through 50, inclusive,

20 Defendants.

Case No.: CGC-07-463871

21 STATE FARM MUTUAL AUTOMOBILE  
22 INSURANCE COMPANY'S ANSWER TO  
23 COMPLAINT

24 Defendant State Farm Mutual Automobile Insurance Company, in answer to the unverified  
25 Complaint of plaintiff herein, denies each and every, all and singular, the allegation of the  
26 unverified Complaint, and in this connection defendant denies that plaintiff has been injured or  
27 damaged in any of the sums mentioned in the Complaint, or in any sum, or at all as the result of any  
28 act or omission of this answering defendant.

29 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON  
30 FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this  
31 answering defendant alleges that said complaint fails to state facts sufficient to constitute a cause of  
32 action against this answering defendant.

33 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
34 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN,  
35 this answering defendant alleges that at all times and places mentioned in the Complaint herein,

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-1-

1 plaintiff failed to mitigate the amount of her damages. The damages claimed by plaintiff could have  
2 been mitigated by due diligence on her part or by one acting under similar circumstances.

3 Plaintiff's failure to mitigate is a bar to her recovery under the Complaint.

4 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON  
5 FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this  
6 answering defendant alleges on information and belief that the sole and proximate cause of the  
7 circumstances and events complained of by plaintiff in the Complaint was due to the acts or  
8 omissions of persons and entities other than this answering defendant.

9 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
10 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN,  
11 this answering defendant alleges that the Complaint is barred by the doctrine of estoppel.

12 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON  
13 FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this  
14 answering defendant alleges that said complaint fails to state facts sufficient to constitute a claim  
15 for exemplary or punitive damages pursuant to §3294 of the Civil Code.

16 AS AN SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
17 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN,  
18 this answering defendant alleges that plaintiff's Complaint, to the extent that it seeks exemplary or  
19 punitive damages pursuant to §3294 of the Civil Code, violates defendant's right to procedural due  
20 process under the Fourteenth Amendment of the United States Constitution, and the Constitution of  
21 the State of California, and therefore fails to state a cause of action upon which either punitive or  
22 exemplary damages can be awarded.

23 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
24 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN,  
25 this answering defendant alleges that plaintiff's Complaint, to the extent that it seeks punitive or  
26 exemplary damages pursuant to §3294 of the Civil Code, violates defendant's rights to protection  
27 from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and  
28 Article I, Section 17, of the Constitution of the State of California, and violates defendant's rights to



1 substantive due process as provided in the Fifth and Fourteenth Amendments of the United States  
2 Constitution and the Constitution of the State of California, and therefore fails to state a cause of  
3 action supporting the punitive or exemplary damages claimed.

4 WHEREFORE, this answering defendant prays for judgment as follows:

- 5 1. That plaintiff take nothing by the Complaint;
- 6 2. For costs of suit incurred herein; and
- 7 3. For such other and further relief as the Court deems proper.

8  
9 Dated: July 31, 2007

HAYES DAVIS BONINO ELLINGSON  
MCLAY & SCOTT, LLP

10  
11 By: 

12 STEPHEN M. HAYES  
13 STEPHEN P. ELLINGSON  
14 MELISSA A. WURSTER  
Attorneys for Defendant  
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY  
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1 **CASE NAME:** Lee (Karen) v. State Farm  
 2 **ACTION NO.:** CGC-07-463871

3 **PROOF OF SERVICE**

4 I am a citizen of the United States. My business address is 203 Redwood Shores Parkway,  
 5 Suite 480, Redwood Shores, California 94065. I am employed in the County of San Mateo where  
 6 this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily  
 7 familiar with my employer's normal business practice for collection and processing of  
 8 correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is  
 9 deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course  
 10 of business.

11 On the date set forth below, following ordinary business practice, I served a true copy of the  
 12 foregoing document(s) described as:

13 **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S**  
 14 **ANSWER TO COMPLAINT**

- 15 ☐ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax  
 16 number(s) set forth below, or as stated on the attached service list, on this date  
 17 before 5:00 p.m.
- 18 ☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be  
 19 placed in the United States mail at Redwood Shores, California.
- 20 ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand  
 21 this date to the offices of the addressee(s).
- 22 ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
 23 overnight delivery carrier with delivery fees provided for, addressed to the  
 24 person(s) on whom it is to be served.

25 Michael D. Michel, Esq.  
 26 Jeff M. Fackler, Esq.  
 27 MICHEL & FACKLER  
 28 2000 Powell Street, Suite 1000  
 Emeryville, CA 94608  
 Telephone: 510.547.7319  
 Facsimile: 510.547.7320

**Attorney for Plaintiff**  
**KAREN LEE**

- 29 ☒ (State) I declare under penalty of perjury under the laws of the State of California  
 30 that the above is true and correct.

31 Executed on July 31, 2007 at Redwood Shores, California.

32   
 33 Abigail Bowman

1 **CASE NAME:** Lee (Karen) v. State Farm  
 2 **ACTION NO.:**

3 **PROOF OF SERVICE**

4 I am a citizen of the United States. My business address is 203 Redwood Shores Parkway,  
 5 Suite 480, Redwood Shores, California 94065. I am employed in the County of San Mateo where  
 6 this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily  
 7 familiar with my employer's normal business practice for collection and processing of  
 8 correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is  
 9 deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course  
 10 of business.

11 On the date set forth below, following ordinary business practice, I served a true copy of the  
 12 foregoing document(s) described as:

13 **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S NOTICE OF**  
 14 **REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. SECTIONS 1332 AND 1441**  
 15 **[DIVERSITY JURISDICTION]; DEMAND FOR JURY TRIAL**

- 16 ☐ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax  
 17 number(s) set forth below, or as stated on the attached service list, on this date  
 18 before 5:00 p.m.  
 19 ☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be  
 20 placed in the United States mail at Redwood Shores, California.  
 21 ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand  
 22 this date to the offices of the addressee(s).  
 23 ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
 24 overnight delivery carrier with delivery fees provided for, addressed to the  
 25 person(s) on whom it is to be served.

26 Michael D. Michel, Esq.  
 27 Jeff M. Fackler, Esq.  
 28 MICHEL & FACKLER  
 2000 Powell Street, Suite 1000  
 Emeryville, CA 94608  
 Telephone: 510.547.7319  
 Facsimile: 510.547.7320

**Attorney for Plaintiff**  
**KAREN LEE**

- 29 ☒ (Federal) I declare under penalty of perjury under the laws of the State of  
 30 California that the above is true and correct.

31 Executed on July 31, 2007 at Redwood Shores, California.

32   
 33 Abigail Bowman

34 **PROOF OF SERVICE**